

Department of Defense

DOD Freedom of Information Act Handbook



Office of Freedom
of Information

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"A popular Government without popular information or the means of acquiring it, is but a Prologue to a Farce or a Tragedy or perhaps both. Knowledge will forever govern ignorance, and a people who mean to be their own Governors, must arm themselves with the power knowledge gives."

James Madison

Introduction

This handbook is intended to assist you in making Freedom of Information Act (FOIA) requests for Department of Defense (DoD) records. It will get you started and provide you with a brief description of your rights and the manner in which DoD will respond to your requests. The information contained herein is not intended to be definitive or exhaustive.

The FOIA, which is known by its legal cite as 5 U.S.C. § 552, along with the DoD Regulation, governs how requests will be processed within the DoD. DoD Regulation 5400.7-R, "Department of Defense Freedom of Information Act Program," can be found at Part 286 of Chapter 32 of the Code of Federal Regulations, which is available in most libraries. It can also be found on the World Wide Web by entering:

(<http://www.dtic.mil/whs/directives/corres/pdf/540007r.pdf>)

Due to its size and complexity, the Department of Defense's FOIA program is decentralized among the several "DoD components," which operate their own FOIA offices and respond directly to the public for their own records. If you desire records from these components, please write to them directly.

Frequently Asked Questions

What is the FOIA?

The FOIA is a Federal law that establishes the public's right to request existing records from Federal government agencies.

Who can file a FOIA request?

Any "person" can file a FOIA request, including U.S. citizens, foreign nationals, organizations, universities, businesses, and state

and local governments. As an exception, DoD components which are part of the intelligence community are precluded from releasing records responsive to requests made by any foreign government or international government organization.

Who is subject to the FOIA and what type of information can be requested?

The FOIA's scope includes Federal Executive Branch Departments, agencies, and offices; Federal regulatory agencies, and Federal corporations. Congress, the Federal Courts, and parts of the Executive Office of the President are not subject to the FOIA. State and local governments are likewise not subject to the Federal FOIA, but some states have their own equivalent access laws for state records. At the Office of the Secretary of Defense/Chairman of the Joint Chiefs of Staff level, you may expect to find policy, planning and budgetary information for the DoD.

What is a record?

A record is the product(s) of data compilation, such as all books, papers, maps, and photographs, machine readable materials, inclusive of those in electronic form or format, or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the United States Government under Federal law in connection with the transaction of public business and in Department of Defense possession and control at the time the FOIA request is made.

Can I ask questions under the FOIA?

The FOIA does not require Federal Agencies to answer questions, render opinions, or provide subjective evaluations. Requesters must ask for existing records, such as those mentioned above.

How do I file a FOIA request?

- Label your request "Freedom of Information Act Request," preferably within the request letter and on the envelope, and address the request to the DoD Component(s) likely to have the information you seek. If you do not know which Component is likely to maintain the information you seek, you may call the Office of Freedom of Information at (703) 696-4689, or write to us at the address below (first address under "DoD Components") for assistance.
- Most DoD components accept e-mail requests. A list of DoD component web pages may be found at:

(<http://www.dod.mil/pubs/foi/dfoipo/> see DoD Service Centers)

- State your willingness to pay applicable fees. If you seek a fee waiver, provide a justification for such a waiver.
- Describe the specific records you are requesting in enough detail so that they can be located with a reasonable amount of effort. Generally, a record is reasonably described when the description contains sufficient file-related information (type of document, title, subject area, date of creation, originator, etc.); or the request contains enough event-related information (date and circumstances surrounding the event the record covers) to permit the conduct of an organized, non-random search.

Note: A sample request letter can be found at the end of this handbook.

Can I ask for expedited processing?

The requester must demonstrate one of the following compelling needs:

- Failure to obtain the records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual.
- Information is urgently needed by an individual primarily engaged in disseminating information in order to inform the public concerning actual or alleged federal government activity.
- Another reason that merits expedited processing is an imminent loss of substantial due process rights.

What are the reasons for not releasing a record?

An office may not release a record when a request for the record is made under the FOIA. They are:

- A reasonable search of files failed to identify responsive records.
- The request is transferred to another DoD Component, or to another Federal Agency.
- The request is withdrawn by the requester.
- The requester is unwilling to pay fees associated with a request; the requester is past due in the payment of fees from a previous FOIA request; or the requester disagrees with the fee estimate.
- A record has not been described with sufficient particularity to enable the DoD Component to locate it by conducting a reasonable search.

- The requester has failed unreasonably to comply with procedural requirements, other than fee-related, imposed by this Regulation or DoD Component supplementing regulations.
- The information requested is not a record within the meaning of the FOIA and this Regulation.
- The request is a duplicate request (e.g., a requester asks for the same information more than once). This includes identical requests received via different means (e.g., electronic mail, facsimile, mail, courier) at the same or different times.
- Any other reason a requester does not comply with published rules other than those outlined above.
- The record is denied in whole or in part in accordance with procedures set forth in the FOIA.

What are the FOIA exemptions?

Records (or portions of records) will be disclosed unless that disclosure harms an interest protected by a FOIA exemption. The nine FOIA exemptions are cited in the Act as 5 U.S.C. § 552(b)(1) through (b)(9):

- (b)(1)--records currently and properly classified in the interest of national security;
- (b)(2)--records related solely to internal personnel rules and practices. There are two profiles, LOW and HIGH;

LOW - Records qualifying under the LOW (b)(2) profile are those that are trivial and housekeeping in nature for which there is no legitimate public interest or benefit to be gained by release, and it would constitute an administrative burden to process the request in order to disclose the records;

HIGH - Records qualifying under HIGH (b)(2) are those containing or constituting statutes, rules, regulations, orders, manuals, directives, instructions, and security classification guides, the release of which would allow circumvention of these records thereby substantially hindering the effective performance of a significant function of the Department of Defense;

- (b)(3)--records protected by another law that specifically exempts the information from public release;

- (b)(4)--trade secrets and commercial or financial information obtained from a private source which would cause substantial competitive harm to the source if disclosed;
- (b)(5)--internal records that are deliberative in nature and are part of the decision making process that contain opinions and recommendations;
- (b)(6)--records which if released, would result in a clearly unwarranted invasion of personal privacy;
- (b)(7)--investigatory records or information compiled for law enforcement purposes;
- (b)(8)--records for the use of any agency responsible for the regulation or supervision of financial institutions; and
- (b)(9)--records containing geological and geophysical information (including maps) concerning wells.

Can I appeal a denial?

Yes. If your request is initially denied in whole or in part under one or more of the above exemptions or denied for some other reason, you will be advised of your appeal rights and the proper procedures for submitting the appeal within 60 days.

How long will it take for my request to be processed?

This is a difficult question to answer because of the size of DoD and its worldwide locations. In fairness to all requesters, DoD processes requests in order by date of receipt and according to their complexity. These are called easy and hard queuing tracks. Whenever possible, an initial determination to release or deny a record is made within 20 working days after receipt of the request by the official who is designated to respond. However, due to the thousands of requests received annually, the DoD is unable to answer all of them within the statute's time requirements. Therefore, requests will have to wait their turn in the Components' queuing tracks.

Under certain conditions, expedited access may be granted if there is a compelling need, such as a threat to life and safety, if a person engaged in disseminating information has an urgency to inform the public on actual or alleged Federal Government activity, an imminent loss of substantial due process rights, or a humanitarian need.

Do I have to pay for a FOIA request?

The FOIA allows fees to be charged to certain types of requesters, but it also provides that waivers or reductions in fees be given if disclosing the information is in the public interest. Public interest is defined as information which significantly enhances the public's knowledge of the operations and activities of the DoD. The FOIA requires that requesters be placed into one of the below categories:

Commercial. Requesters who seek information for a use or purpose that furthers their commercial, trade, or profit interest are considered commercial requesters. Commercial requesters pay all fees for search, review and duplication.

Educational. Institutions of education, including preschools, elementary or secondary schools and institutions of higher learning, qualify as educational institutions. The records must be sought in furtherance of scholarly research. Educational requesters pay only duplication fees, unless it is determined that fees are waived or reduced in the public interest. The first 100 pages are provided at no cost. (Note: Students are not considered Educational Use requesters).

Non-Commercial Scientific. A non-commercial scientific institution is operated solely for conducting scientific research. The records must be sought in furtherance of scientific research. Like educational requesters, these requesters pay only duplication fees, unless it is determined that fees are waived or reduced in the public interest. The first 100 pages are provided at no cost.

News Media. A representative of the news media is a person actively gathering news for an entity organized and operated to publish or broadcast news to the public. News media pay only duplication fees, unless it is determined that fees are waived or reduced in the public interest. Again, the first 100 pages are provided at no cost.

"Other" Requesters. Requesters who do not qualify in another category are considered "other" requesters, and normally make requests for agency records for their personal use. "Other" requesters receive two hours search, all review costs, and the first 100 pages at no cost.

All requesters should submit a willingness to pay fees regardless of the fee category, however, this does not mean you will be charged fees. Except for commercial requesters, waivers are always considered. Fee waivers may be granted when disclosure of the records is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government. The following factors are weighed in making a fee waiver determination:

- The subject of the request.

- The informative value of the information to be disclosed.
- The contribution to an understanding of the subject by the general public likely to result from the disclosure.
- The significance of the contribution to public understanding.
- Disclosure of the information is not primarily in the commercial interest of the requester.
- The ability of the requester to disseminate the information.

DoD Components

Office of Freedom of Information
1155 Defense Pentagon
Washington, DC 20301-1155

Department of the Army
FOIA/Privacy Acts Division
ATTN: AHRC-PDD-FP
7701 Telegraph Road
Alexandria, VA 22315-3860

Department of the Navy
Chief of Naval Operations
DNS-36
2000 Navy Pentagon
Washington, DC 20350-2000

Department of the Air Force
HAF/ICIOD(FOIA)
1000 Air Force Pentagon
Washington, DC 20330-1000

Commandant of the Marine Corps (ARSE)
Headquarters U.S. Marine Corps
2 Navy Annex
Washington, DC 20380-1775

Defense Contract Audit Agency
ATTN: CMR
8725 John J. Kingman Road,
Suite 2135
Fort Belvoir, VA 22060-6219

Defense Finance & Accounting Service
DFAS-HAC/DE
Corporate Communications
6760 East Irvington Place
Denver, CO 80279-8000

Defense Intelligence Agency
ATTN: DAN-1A Rm E4-234
Washington, DC 20340-5100

Defense Security Service
Office of FOIA & Privacy, V0020
1340 Braddock Place
Alexandria, VA 22314-1651

Defense Information Systems Agency
Regulatory/General Counsel
ATTN: FOIA
701 South Courthouse Road
Arlington, VA 22204-2199

Defense Logistics Agency
ATTN: DP-FOIA
8725 John J. Kingman Road
STOP 2533
Ft Belvoir, VA 22060-6221

Defense Threat Reduction Agency
COSMI FOI/Privacy Office
8725 John J. Kingman Road
Ft Belvoir, VA 22060-6201

Defense Contract Management Agency
ATTN: DCMA-DSA
6350 Walker Lane #300
Alexandria, VA 22310-3226

Inspector General of the Department of Defense
Chief, FOIA/PA Office
400 Army Navy Drive, Rm 201
Arlington, VA 22202-4704

National Geospatial-Intelligence Agency
General Counsel's Office, GCP
Mail Stop D-10
4600 Sangamore Road
Bethesda, MD 20816-5003

National Guard Bureau
Attn: NGB-SDA (FOIA)
1411 Jefferson Davis Highway
Arlington, VA 22202-3231

National Reconnaissance Office
Information Access & Release Center
ATTN: FOIA Officer
14675 Lee Road
Chantilly, VA 20151-1715

National Security Agency/Central Security Service
FOIA/PA Services
DC34
9800 Savage Road, STE 6248
Ft. George G. Meade, MD 20755-6248

Combatant Commands

U.S. Joint Forces Command
Code JO24
ATTN: FOIA Officer
1562 Mitscher Ave, Ste 200
Norfolk, VA 23551-2488

U.S. European Command (HQ USEUCOM)
ATTN: ECJ1-AR (FOIA)
Unit 30400
APO, AE 09131

U.S. Southern Command
SCJ1-A (FOIA)
3511 NW, 91st Avenue
Miami, FL 33172-1217

U.S. Pacific Command
J141 FOIA
Box 64028
Camp H.M. Smith, HI 96861-4028

U.S. Special Operations Command
SOCS-SJS-I/FOIA Service Center
7701 Tampa Point Boulevard
MacDill AFB, FL 33621-5323

U.S. Central Command
CCJ6-DM (FOIA)
7115 South Boundary Blvd
MacDill AFB, FL 33621-5510

U.S. Northern Command
USNORTHCOM FOIA Officer
250 Vandenberg Street, Suite B016
Peterson Air Force Base, CO 80914

U.S. Transportation Command
ATTN: TCCS-IM
508 Scott Drive, Bldg 1961
Scott AFB, IL 62225-5357

U.S. Strategic Command
ATTN: J006 (FOIA)
901 SAC Blvd, STE 2E20
Offutt AFB, NE 68113-6000

Reading Rooms

Each component operates its own Reading Room. For access procedures, please contact the component for which you are interested.

Electronic Access

At the Defense Freedom of Information Policy Office website (<http://www.dod.mil/pubs/foi/dfoipo/> see DoD Service Centers), you will find a multitude of information related to the DoD Freedom of Information Act program.

Conclusion

We trust this information will be helpful to you when pursuing FOIA requests with DoD. If you have any suggestions, you may call (703) 696-4689 and ask for a FOIA officer.

Sample FOIA Request Letter

FOIA Requester Service Center [or FOIA Officer]
DoD Component
Address
City, State, Zip Code

Dear :

This is a request under the Freedom of Information Act (5 U.S.C. § 552).

I request that a copy of the following document(s) be provided to me: [identify the documents as specifically as possible].

In order to help you determine my status for the purpose of assessing fees, you should know that I am [insert one of the descriptions below]

a representative of the news media affiliated with the _____ newspaper (magazine, television station, etc.), and this request is made as part of news gathering and not for a commercial use.

affiliated with an educational or noncommercial scientific institution, and this request is made for a scholarly or scientific purpose and not for a commercial use.

affiliated with a private business and am seeking information for use in the company's business.

an individual seeking information for personal use and not for a commercial use.

I am willing to pay fees for this request up to a maximum of \$____. If you estimate that the fees will exceed this limit, please inform me first.

I also include a telephone number at which I can be contacted if necessary to discuss any aspect of my request.

Sincerely,

Name
Address
City, State, Zip Code
Telephone number